

Title	Juvenile Law: Petitions and Restraining Orders (amend Cal. Rules of Court, rule 1429.5; revise Judicial Council forms JV-100, JV-110, JV-245, and JV-600)
Summary	The proposed amendments to rule 1429.5 would conform it to Welfare and Institutions Code section 213.5, which addresses how to obtain reissuance of a temporary restraining order when the person to be restrained could not be served within the time required by the statute. Proposed revisions to forms JV-100, JV-110, JV-245, and JV-600 would (1) clarify that a party may use any of the petition forms to request the issuance of a restraining order and (2) eliminate references to presumed fathers.
Source	Family and Juvenile Law Advisory Committee Hon. Michael Nash and Hon. Mary Ann Grilli, Co-chairs
Staff	John Augustine Sweeney, 415-865-7732, john.sweeney@jud.ca.gov
Discussion	<p>Assembly Bill 3028 recently amended Welfare and Institutions Code section 213.5 to clarify the procedure for issuing a subsequent temporary restraining order when the person to be restrained could not be served within the time required by the statute. (The relevant portions of section 213.5 are attached at pages 5–6.)</p> <p>The proposed amendments to rule 1429.5 conform the rule to Welfare and Institutions Code section 213.5(c). Before the passage of the bill, if the person to be restrained could not be served within the time required, the party seeking the protective order needed to file a motion to request that the court issue a subsequent temporary restraining order.</p> <p>Welfare and Institutions Code section 213.5(c) now states: “The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and to reissue [<i>sic</i>] an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order must state on its face the date of expiration of the order.” An additional amendment to rule 1429.5 would add a reference to form JV-110, <i>Juvenile Dependency Petition (Version Two)</i>. Rule 1429.5 currently requires a person seeking a restraining order in writing to submit the application to the court on form JV-245 accompanied by either form JV-100, <i>Juvenile Dependency Petition (Version One)</i> or JV-600, <i>Juvenile</i></p>

Wardship Petition. But an application for a restraining order in a dependency case may accompany either version of the petition. The amended rule would clarify this option. A technical revision to form JV-245, *Application and Declaration for Restraining Order (Juvenile)*, would also clarify that form JV-110 may accompany the application for a restraining order.

The committee proposes revising forms JV-100, JV-110, and JV-600 to add check boxes to indicate whether a restraining order has been requested.

The committee also proposes revising forms JV-100, JV-110, and JV-600 to remove references to presumed fathers. Section 361.5(a) of the Welfare and Institutions Code distinguishes between presumed fathers and biological fathers. It requires the court to provide reunification services to presumed fathers. For biological fathers, however, section 361.5(a) requires no services; it merely allows the court to provide them if the court determines that the services would benefit the child. Only a court may determine whether a man has attained presumed father status.¹ Forms JV-100, JV-110, and JV-600, which are completed and filed by social workers or probation officers, should not refer to this status. The revised form would ask only whether the purported father either is or was married to the mother or is alleged to be the father. The social worker or probation officer can determine this information without reaching any legal conclusions. Samples of the revised forms are attached at pages 7–14.

Attachments

¹ The committee has proposed additional revisions to form JV-600 in a separate proposal relating to the Indian Child Welfare Act.

Rule 1429.5 of the California Rules of Court would be amended, effective January 1, 2004, to read:

Rule 1429.5. Restraining orders

(a) * * *

(b) **[Application (§§ 213.5, 304)]** Application for restraining orders may be made orally at any scheduled hearing regarding the child who is the subject of a petition under section 300, 601, or 602, or may be made by written application, or may be made on the court's own motion. The written application must be submitted on:

(1) Judicial Council forms *Juvenile Dependency Petition (Version One)* (JV-100) or *Juvenile Dependency Petition (Version Two)* (JV-110), and *Application and Declaration for Restraining Order* (JV-245); or

(2) Judicial Council forms *Juvenile Wardship Petition* (JV-600) and *Application and Declaration for Restraining Order* (JV-245).

(c)–(f) * * *

(g) **[Order to show cause and reissuance (§ 213.5(c))]** When a temporary restraining order is granted without notice, the matter must be made returnable on an order to show cause why the order should not be granted, no later than 15 days or, on a showing of good cause, 20 days from the date the temporary restraining order is granted.

(1) On the motion of the person seeking the restraining order or on its own motion, the court may shorten the time for service of the order to show cause on the person to be restrained ~~of the order to show cause~~.

(2) ~~When a temporary restraining order is granted without notice, and service on the restrained person has not been accomplished, or when the hearing must be continued for some other reason, the court may reissue the temporary restraining order pursuant to the procedures in section 527 of the Code of Civil Procedure. The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and issue a subsequent restraining order. The reissued order must state on its face the date of expiration of the order.~~ Judicial Council form

1 *Application and Order for Reissuance of Order to Show Cause* (FL-
2 306/JV-251) must be used for this purpose.
3
4 **(h)–(l)** * * *

CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE
SECTION 213.5

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court issuing an ex parte order pursuant to this subdivision may simultaneously issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and to reissue an order previously issued

and dissolved by the court for failure to serve the person to be restrained. The reissued order shall state on its face the date of expiration of the order. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d)-(l) * * *

PETITIONER OR ATTORNEY (Name and Address): 		FOR COURT USE ONLY <div style="text-align: center;"> <h1>DRAFT 3</h1> <h1>3/20/03</h1> </div>
TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CHILD'S NAME:		
<div style="text-align: center;"> JUVENILE DEPENDENCY PETITION (VERSION ONE) (Welf. & Inst. Code, § 300 et seq.) </div> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> § 300—Original <input type="checkbox"/> § 342—Subsequent <input type="checkbox"/> § 213.5—Restraining Order Requested </div> <div> <input type="checkbox"/> § 387—Supplemental <input type="checkbox"/> § 388—Modification </div> </div>		CASE NUMBER: <hr/> RELATED CASES (If any):

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code (check applicable boxes; see attachments for concise statements of facts): <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d) <input type="checkbox"/> (e) <input type="checkbox"/> (f) <input type="checkbox"/> (g) <input type="checkbox"/> (h) <input type="checkbox"/> (i) <input type="checkbox"/> (j)				
b. Child's name:		c. Age:	d. Date of birth:	e. Sex:
f. Mother's name: <input type="checkbox"/> unknown Address: <input type="checkbox"/> unknown		g. Father's name: <input type="checkbox"/> unknown Address: <input type="checkbox"/> unknown <input type="checkbox"/> married to mother <input type="checkbox"/> alleged		
h. Other (state name, address, and relationship to child): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.		i. Other (state name, address, and relationship to child): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.		
j. Prior to intervention, child resided with <input type="checkbox"/> Father <input type="checkbox"/> Mother <input type="checkbox"/> Other (state name, address, and relationship to child):		k. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained Date and time of detention: Current place of detention (address): <input type="checkbox"/> Relative <input type="checkbox"/> Shelter/foster care <input type="checkbox"/> Other		
l. <input type="checkbox"/> Child may be a member of, or eligible for, membership in a federally recognized Indian tribe.				
m. <input type="checkbox"/> Child may be of Indian ancestry.				

2. Petitioner requests that the court find these allegations to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

Address and telephone number:

Number of pages attached:

☐ Other children are listed on *Additional Children Attachment* (form JV-101)

(See important notice on page 2)

Page 1 of 2

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

Cal. Rules of Court, rule 1402
Welfare and Institutions Code,
§ 300 et seq.

— NOTICE —

TO PARENT

Your parental rights may be permanently terminated. To protect your rights, you must appear in court and answer this petition.

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for you or your child by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.

CASE NAME: _____	CASE NUMBERS JUVENILE: FAMILY:
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APPLICATION AND DECLARATION FOR RESTRAINING ORDER—JUVENILE
(Attachment to JV-100, JV-110, or JV-600)

1. The child is
- ☐ a dependent of the court under Welfare and Institutions Code section 300; or
 - ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 300; or
 - ☐ a ward of the court under Welfare and Institutions Code section 601; or
 - ☐ a ward of the court under Welfare and Institutions Code section 602; or
 - ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 601; or
 - ☐ the subject of a petition that has been filed in this court under Welfare and Institutions Code section 602.

2. Petitioner is the
- ☐ mother.
 - ☐ father.
 - ☐ child.
 - ☐ guardian.
 - ☐ social worker.
 - ☐ probation officer.
 - ☐ present caretaker of child.
 - ☐ court-appointed special advocate.
 - ☐ representative of Indian child's tribe.
 - ☐ other *(state interest or relationship to child)*:

3. **PERSONS TO BE PROTECTED** *(List full names and ages of all persons to be protected; also list relationship to child in item 1):*

Name: _____ Age: _____ Relationship (child, parent, legal guardian, current caretaker): _____

4. a. **PERSON TO BE RESTRAINED** *(full name)*:

b. **DESCRIPTION:**

Sex: ☐ M ☐ F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____

5. The person to be restrained has *(check at least one box)*:

- ☐ assaulted or attempted to assault one or more of the persons to be protected.
- ☐ caused, threatened, or attempted bodily injury on one or more of the persons to be protected.
- ☐ caused one or more of the persons to be protected to fear physical or emotional harm.
- ☐ sexually assaulted or attempted to sexually assault one or more of the persons to be protected.
- ☐ stalked one or more of the persons to be protected.
- ☐ other *(specify)*:

☐ as described in item 7

☐ as described in attached report by: ☐ police officer ☐ social worker ☐ probation officer
☐ other

6. **PERSONAL CONDUCT ORDERS**

- ☐ Restrained person must not harass, molest, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, destroy personal property, disturb the peace, keep under surveillance, or block movements of each person named in item 3.
- ☐ Restrained person must not contact (either directly or indirectly), or telephone, or send messages or mail or e-mail to each person named in item 3
 - ☐ Except for brief and peaceful contact as required for court ordered visitation of children
 - ☐ Except for peaceful written contact through a process server or another person for legal papers related to a court case
- ☐ Restrained person must move immediately from *(address)*:

CASE NAME: _____	CASE NUMBERS JUVENILE: FAMILY:
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6. d. ☐ Restrained person must stay away at least (*specify*): _____ yards from the following persons and places (*the addresses of these places are optional and may be kept confidential*):
- (1) ☐ Protected persons named in item 3.
- (2) ☐ Protected person's residence (*address optional*):
- (3) ☐ Protected person's place of work (*address optional*):
- (4) ☐ The child's school or place of child care (*address optional*):
- (5) ☐ Protected person's vehicle (*description optional*):
- (6) ☐ Other (*specify*):
(*address optional*):
- e. ☐ Restrained person must sell or give up any firearms that he or she has or controls for a period not to exceed the duration of the restraining order. Describe any use of or threat regarding use of firearms in item 7. Petitioner believes the restrained person has the following firearms (*specify*):
- f. ☐ The child is a ward or the subject of a petition under section 601 or 602 and must not contact, threaten, stalk, or disturb the peace of (*list names*):
- g. ☐ Other orders:

7. **DESCRIPTION OF CONDUCT** (*describe in detail the most recent incidents supporting this application or attach copies of reports of law enforcement officers, social workers, probation officers, or other professional persons*):

8. ☐ **LAW ENFORCEMENT**

The following law enforcement agencies must receive copies of orders.

Law Enforcement Agency

Address

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

PETITIONER OR ATTORNEY (Name and Address): _____ ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	TELEPHONE NO.:	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 20px 0;">DRAFT 2</div> <div style="font-size: 2em; font-weight: bold; margin: 0 0 20px 0;">3/14/03</div>
CASE NAME:		CASE NUMBER:
JUVENILE WARDSHIP PETITION (Welfare and Institutions Code, § 600 et seq.) <div style="display: flex; justify-content: space-around;"> <div> <input type="checkbox"/> § 601(a) <input type="checkbox"/> § 601(b) </div> <div> <input type="checkbox"/> § 602(a) <input type="checkbox"/> § 777 </div> <div> <input type="checkbox"/> § 778 <input type="checkbox"/> § 213.5 </div> </div>		

1. Petitioner on information and belief alleges the following:

a. <input type="checkbox"/> The child named below comes within the jurisdiction of the juvenile court under the following sections of the Welfare and Institutions Code (<i>check applicable boxes; see attachments for concise statements of facts</i>): <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602(a) Violation (<i>specify code and section No.</i>): </div>			
b. <input type="checkbox"/> Under a previous order of this court, dated _____, the child was declared a ward under Welfare and Institutions Code section <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602(a).			
c. Child's name and address:	d. Age:	e. Date of birth:	f. Sex:
g. Mother's name: <input type="checkbox"/> unknown Address: <input type="checkbox"/> unknown	h. Father's name: <input type="checkbox"/> unknown Address: <input type="checkbox"/> unknown <input type="checkbox"/> married to mother <input type="checkbox"/> alleged		
i. Other (<i>state name, address, and relationship to child</i>): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.	j. Other (<i>state name, address, and relationship to child</i>): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.		
k. Attorney for child (if known): Address: Phone number:	l. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained. Date and time of detention (custody):		
m. <input type="checkbox"/> Child may be a member of, or may be eligible for membership in, a federally recognized Indian tribe.			
n. <input type="checkbox"/> Child may be of Indian ancestry			

2. ☐ Petitioner requests a hearing to determine whether the child is a fit and proper subject under juvenile court law under Welfare and Institutions Code section ☐ 707(a)(1) ☐ 707(a)(2) ☐ 707(c).

CASE NAME:	CASE NUMBER:
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3. Petitioner requests that the court find these allegations to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF PETITIONER)

☐ Number of pages attached: _____

— NOTICE —

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for your child or you by a public defender or other attorney, and the cost of supervision of your child by order of the juvenile court.